

EXHIBIT 46C

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1 A. I recall seeing it. I don't recall the
2 whole story behind it.

3 Q. The documents that make up this fax
4 were received and maintained by Ven-A-Care in the
5 ordinary course of its business?

6 A. Yes. These are Ven-A-Care documents.

7 Q. Now, as you look through the
8 information provided to Jerry Wells of Florida
9 Medicaid, for the different contract prices and
10 wholesale prices, now it shows that the prices
11 for Albuterol were dropping over time, right?

12 A. Yes.

13 Q. It also shows that there are different
14 contract prices for different group purchasing
15 organizations, right?

16 A. Yes.

17 Q. And wholesalers had different prices
18 from each other, and as well as different from
19 the GPOs, right?

20 A. Well, there was only one wholesaler
21 here. That's McKesson.

22 Q. The wholesaler --

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1 A. There is nothing really to compare it
2 to, but there is several GPOs. And like I told
3 you, here is the home infusion provider closed
4 shop designation.

5 Q. Just as a general matter, not all --
6 not all pharmacies were members of the same GPOs,
7 right?

8 A. Some were members of several GPOs, and
9 you shop the GPOs.

10 Q. So not all pharmacies had access to the
11 same prices, right?

12 A. It depended on who -- you know, what
13 I'm saying is, is you could be -- you could be a
14 member of one GPO or six GPOs, you know, if you
15 wanted to, if you qualify.

16 Q. All right. Let's go through each --
17 each of them. The first page is Greater New York
18 Hospital Association. Ven-A-Care was a member of
19 this GPO, right?

20 A. Yes.

21 Q. And Ven-A-Care received this Dey
22 contract price sheet in connection with being a

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1 member of this GPO, right?

2 A. Yes.

3 Q. And the next page is GeriMed, it is a
4 contract price sheet for the GPO GeriMed?

5 A. Yes.

6 Q. At this time, in March of 1997, was
7 Ven-A-Care a member of GeriMed?

8 A. We have the document. We probably
9 were. Yes.

10 Q. And Ven-A-Care received this document
11 in connection with its membership?

12 A. Yes.

13 Q. Ven-A-Care didn't specifically request
14 it? It just automatically received it?

15 A. The way -- they came whenever there
16 were price changes through any GPO that I can
17 recall.

18 Q. Okay. And the next sheet is for AHT.

19 A. Which was the follow-up of CPN, which
20 is right behind it.

21 Q. Right. So that would be another GPO
22 that Ven-A-Care was a member of at the time,

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1 right?

2 A. Right.

3 Q. Now, the next four pages are from
4 McKesson, right?

5 A. Correct.

6 Q. These are catalogue prices?

7 A. These are McKesson catalogue prices.

8 Q. And so any pharmacist could contact
9 McKesson and obtain these catalogue prices from
10 them, right?

11 MR. BREEN: Objection. Form.

12 THE WITNESS: Well, a pharmacy.

13 BY MR. KATZ:

14 Q. Pharmacy?

15 A. Pharmacy. It's a wholesaler.
16 Pharmaceutical wholesaler.

17 Q. So a pharmacy would contact McKesson
18 and McKesson would send these catalogue prices to
19 it, right?

20 A. If they requested it.

21 Q. Did Ven-A-Care receive this pursuant to
22 its request, or did McKesson just send it to

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1 them?

2 A. Well, I think you get -- you get these
3 catalogues as a part of your membership -- or not
4 membership, but the fact that you buy from the
5 wholesalers, they keep sending you updated
6 catalogues, you know, with updated pricing.

7 Q. So McKesson would send these out to all
8 the pharmacies that purchased drugs from them?

9 A. To the pharmacies that purchases drugs
10 from them. They would send them once or twice a
11 year.

12 Q. Okay. Now, if you go to the next two
13 pages, these are price sheets from the GPO,
14 Pharmaceutical Buyers, Inc., right?

15 A. Yes.

16 Q. And these are prices specific to home
17 infusion provider closed shops, right?

18 A. Yes.

19 Q. But McKesson's prices, they are not
20 specific to home infusion shops, right?

21 A. I would tell you that McKesson
22 generally sells to retail pharmacies. That's

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1 their big market. That's where they move their
2 product, retail pharmacies.

3 Q. But these catalogue prices were
4 available to all pharmacies, right?

5 A. For pharmacists -- pharmacies that
6 wanted to purchase through them.

7 Q. Okay. And there is no designation of a
8 class of trade for the GeriMed, AHT, or Greater
9 New York contract price sheets, right?

10 A. Well, I don't know. It's not printed -
11 - you know, I don't know if there was a
12 designation or not.

13 Q. So you don't know?

14 A. I don't recall if there was --

15 Q. Whether for any of these GPOs --

16 A. I mean, pharmaceutical buyers point it
17 out. That's why I was pointing it out to you.

18 Q. Did Mr. Wells request this information?

19 A. I don't recall the circumstances behind
20 it, but it looks like I said, "hope this helps."
21 Jerry would sometimes call us for pricing
22 information if he was trying to MAC a drug, if

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1 A F T E R N O O N S E S S I O N

2 (1:20 p.m.)

3 Whereupon,

4 T. MARK JONES,

5 the witness on the stand at the time of recess,

6 having been previously duly sworn, was further

7 examined and testified as follows:

8

9 EXAMINATION BY COUNSEL FOR DEY AND
10 MYLAN (RESUMED)

11 BY MR. KATZ:

12 (Exhibit Dey 310 was marked for
13 identification.)

14 THE VIDEOGRAPHER: The time is 1:20
15 p.m. We are back on the record.

16 Q. Good afternoon, Mr. Jones.

17 A. Good afternoon.

18 Q. While you were away, I placed another
19 exhibit in front of you. It's marked Dey Exhibit
20 310. Take a look at it. Let me know when you're
21 ready.

22 A. Okay.

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1 Q. You should all have it.

2 A. Okay.

3 Q. Now, you've seen this document before,
4 right?

5 A. I have.

6 Q. This is your handwriting on the fax
7 cover sheet?

8 A. It is.

9 Q. And within this fax are two contract
10 price sheets from the GPOs Greater New York and
11 GeriMed, right?

12 A. Yes.

13 Q. And Ven-A-Care received those in the
14 ordinary course of business, right?

15 A. These would be Ven-A-Care documents,
16 correct.

17 Q. Right. And then the last page is a --
18 is copied out of the Red Book, right?

19 A. It's an excerpt from Red Book.

20 Q. Where did Ven-A-Care obtain this
21 document?

22 A. Generally, we had -- we had a complete

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1 set of Red Books and Blue Books, so we would just
2 copy the page that was appropriate. Usually we
3 put the date or at least the year on it, but I
4 don't see --

5 Q. And the Red Book is a publication that
6 Ven-A-Care purchased, right?

7 A. Yes. We purchased it to have it
8 delivered.

9 Q. And the Red Book is available for
10 anyone who wants to purchase it, right?

11 A. Like Chris Cook said, in the Library of
12 Congress.

13 Q. And then this fax was prepared by Ven-
14 A-Care and sent to Rob Vitto and Linda Ragone in
15 the regular course of business, right?

16 A. Yep.

17 Q. And it was sent on June 19th, 1997,
18 right?

19 A. That's what it says. Yes.

20 Q. Okay. And the Re line, it says, Dey
21 Labs contract for Greater New York Hospital
22 Association buying group, prices keep going down?

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1 (Exhibit Dey 313 was marked for
2 identification.)

3 BY MR. KATZ:

4 Q. I've handed you a document marked Dey
5 Exhibit 313. And this is a fax that Ven-A-Care
6 sent to Mr. Vitto of the OIG, right?

7 A. It is.

8 Q. And it was sent on November 10th, 1997,
9 right?

10 A. Yes, it was.

11 Q. And it regards the Albuterol 0.083
12 percent unit dose solution, right?

13 A. Well, it says Albuterol, but the
14 attached page, yes, says both. Plus rebates.

15 Q. Now it refers to 0.83 percent, but it's
16 --

17 A. That's --

18 Q. That's really referring to the 0.083,
19 right?

20 A. Yes. That's just a typo on the bottom
21 of the inhalers.

22 Q. Right. Where did Ven-A-Care get the

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1 information that was provided to --

2 A. This was sent to Ven-A-Care from JJ
3 Balan.

4 Q. So these were advertisements that JJ
5 Balan sent out to its customers, not just Ven-A-
6 Care, but other customers, too?

7 A. Not just pharmacy customers, yes.

8 Q. And JJ Balan was a local wholesaler,
9 right?

10 A. Were they in Miami? I can't remember.
11 I don't recall.

12 Q. Well, they are not a national
13 wholesaler, are they?

14 A. I don't know. I mean, they may be
15 regional. I'm not -- I'm not sure. I can't
16 remember.

17 Q. They still exist?

18 A. Yes. Yes.

19 Q. And this ad also refers to rebates that
20 were available for this drug, right?

21 A. Right. But it's not really clear which
22 one it is.

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1 compare them to Dey's AWP's and determine a
2 spread, right?

3 A. These are prices in the marketplace
4 that the OIG could have looked at. Yes.

5 Q. To determine a spread, right?

6 A. If he compared it to the AWP, yes.

7 Q. Okay. And that's something that the
8 OIG could have done because they also had access
9 to the published AWP's, right?

10 A. Yes.

11 (Exhibit Dey 315 was marked for
12 identification.)

13 BY MR. KATZ:

14 Q. Okay, Mr. Jones, why don't you -- oh,
15 I've just handed you a document marked Dey
16 Exhibit 315. Why don't you explain what this is
17 for the record?

18 A. It is a fax to Mr. Rob Vitto from the
19 OIG from Zach.

20 Q. This would be Zach Bentley?

21 A. That would be Zach Bentley.

22 Q. Of Ven-A-Care?

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1 A. Uh-huh. Dated 2-3-98, and the Re says,
2 Dey Albuterol rebate.

3 Q. So the purpose of this fax was to
4 inform the OIG of the rebates that were available
5 to purchasers of Dey's Albuterol unit dose,
6 right?

7 A. What this tells you is that there is a
8 retail pharmacy rebate offered for Dey products
9 through ANDA Generics.

10 Q. What is ANDA Generics?

11 A. ANDA Generics is a specialty
12 wholesaler/distributor.

13 Q. And so a pharmacy didn't need a
14 contract with ANDA Generics. Any pharmacy could
15 call ANDA Generics and purchase this Albuterol
16 and possibly get this rebate, right?

17 A. This was a distributor/wholesaler you
18 could buy from without a contract. Yes. And if
19 you qualified, you would get the rebate, I'm
20 assuming.

21 Q. And this was something that Ven-A-Care
22 informed the OIG, right?

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1 A. Well, we sent it their way.

2 Q. Did Mr. Vitto specifically ask for
3 rebate information?

4 A. No. I don't recall.

5 Q. I notice that there is not much of an
6 explanation in this fax.

7 A. That doesn't mean there wasn't
8 something supposed to be --

9 Q. So I mean, rebates, pricing
10 information, this was just information that Ven-
11 A-Care continuously sent to the federal
12 government, right?

13 A. Yes.

14 (Exhibit Dey 316 was marked for
15 identification.)

16 BY MR. KATZ:

17 Q. I've handed you a document marked Dey
18 Exhibit 316. Can you describe this one?

19 A. A fax to Mr. Vitto from Zach Bentley,
20 8-13-98, another Albuterol rebate document. Only
21 this one would be through ServAll, which is
22 McKesson, Econolink. ServAll would be like a

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1 GPO.

2 Q. ServAll is a GPO that is through
3 McKesson, right?

4 A. Yes.

5 Q. And McKesson also had a separate
6 wholesale business, right?

7 A. Yes.

8 Q. Was Ven-A-Care a member of ServAll at
9 this time?

10 A. Yes. I believe so.

11 Q. So this was a flier that would have
12 been sent to -- or this is a fax that would have
13 been sent to all ServAll members as stated on the
14 fax right?

15 A. ServAll members that qualified for
16 retail pharmacy rebate.

17 Q. Okay. And this is another example of a
18 documentation regarding rebates on Dey's
19 Albuterol Sulfate that was provided by Ven-A-Care
20 to the federal government?

21 A. Yes. It's also a good example of
22 wholesalers marketing Dey's product as well, too.